

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY A. QUANDT
Claimant

VS.

IBP, INC.
Respondent

AND

SELF-INSURED
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

DOCKET NO. 184,591

ORDER

ON the 25th day of October, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge Floyd V. Palmer, dated June 23, 1994, came on for oral argument by telephone conference. Ernest L. Johnson has been appointed Member Pro Tem for this particular case to serve in place of Board Member Gary M. Korte who recused himself from this proceeding.

APPEARANCES

The claimant appeared by and through her attorney, Robert R. Lee of Wichita, Kansas. The respondent, a self-insured, appeared by and through its attorney, Pamela L. Falk of Emporia, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney Derek R. Chappell of Ottawa, Kansas. There were no other appearances.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the claimant's deposition dated June 16, 1994, and the transcript of preliminary hearing held before Administrative Law Judge Floyd V. Palmer on June 17, 1994, and the exhibits attached thereto.

ISSUES

The Administrative Law Judge, in his Preliminary Hearing Order dated June 23, 1994, found that claimant was entitled to temporary total disability compensation and medical treatment for her right knee injury, but denied claimant's request for an order directing that respondent pay past medical bills for neck surgery. Claimant appeals this Order raising the single issue as to whether the claimant's neck injury arose out of and in the course of her employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For Preliminary Hearing purposes only, the Appeals Board, having reviewed the entire record, makes the following findings of fact and conclusions of law:

- (1) The above issue raised by the claimant is an issue subject to review of the Appeals Board pursuant to K.S.A. 44-534a(a)(2).
- (2) After a complete review of the preliminary hearing record, the Appeals Board finds that the claimant has failed to prove by a preponderance of the credible evidence that her alleged neck injury arose out of a fall at work on March 26, 1993.

In proceedings under the Workers Compensation Act, the burden of proof is on the claimant to establish his or her right to an award of compensation and to prove the various conditions on which such rights depend. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record. K.S.A. 44-501(a).

Claimant alleges that on March 26, 1993, while working as a secretary for the respondent, she injured her right knee when she fell on a slick floor. Her knee was treated conservatively and she returned to work. Claimant testified that two or three weeks after the fall she noticed that her right hand was going numb. Those problems were reported to the plant nurse. Through appointments arranged by the respondent, and during the time claimant was receiving treatment for her knee injury, claimant was evaluated for her right upper extremity problems by several physicians. She eventually was seen by Dr. Paul M. Arnold at the University of Kansas Medical Center in mid-September 1993. Tests performed showed some cervical stenosis and disk herniation at levels above an anterior cervical discectomy and fusion from C5-C7 performed some twenty years prior. On October 8, 1994, Dr. Arnold performed a C3-C5 anterior cervical discectomy and fusion.

After the surgery Dr. Arnold, in a letter dated December 22, 1993, stated regarding claimant: "She has degenerative disease and advanced myelopathy which could have been accelerated by her old fusion and also by her fall. However, it is unlikely that the fall itself would cause her stenosis and the need for her to have a 2 level discectomy and fusion." Respondent denies liability for expenses related to the neck based on this conclusion. Claimant argues that, regardless of causation, those expenses should be awarded because respondent arranged for the medical services that resulted in the neck surgery. Therefore, these are authorized medical expenses. Respondent asserts that no commitment was ever made to claimant or health care providers that the services regarding the neck would be authorized.

The Administrative Law Judge found the claimant failed to meet her burden of proof to establish that her neck injury was work related. The Appeals Board affirms this preliminary decision of the Administrative Law Judge. It is the finding of the Appeals Board that the claimant's testimony and medical evidence failed to establish that it is more

probably true than not that her neck injury was related to her fall at work on March 26, 1993.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer dated June 23, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita KS
Pamela L. Falk, Emporia KS
Derek R. Chappell, Ottawa KS
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director